

## **COST DEFRAIMENT AGREEMENT**

**THIS COST DEFRAIMENT AGREEMENT** (this “**Agreement**”) made and entered into on this \_\_\_\_ day of December 2014, by and between the City of Brookhaven (the “**City**”), a Georgia municipal corporation, and Children’s Healthcare of Atlanta, Inc. (“**CHOA**”), a Georgia nonprofit corporation.

**WHEREAS**, the City proposes to annex approximately 166.0244 acres of real property, more particularly described on Exhibit A attached hereto and by this reference made a part hereof (the “**Area**”), part of which is owned by CHOA and its affiliates; and

**WHEREAS**, the City has determined that the ad valorem tax collections generated by the City’s millage rate imposed throughout the City as a whole on the properties located in the Area subject to ad valorem property taxation will not initially produce sufficient revenues to the City to pay the City’s cost of providing police services to the Area; and

**WHEREAS**, the City plans to create a special tax district comprising the Area and to impose additional ad valorem property taxes on the properties located in the special tax district subject to ad valorem property taxation in order to generate additional ad valorem property tax revenue to pay the City’s cost of providing police services to the Area; and

**WHEREAS**, CHOA owns property in the Area that is presently exempt from ad valorem property taxation; and

**WHEREAS**, in order to induce the City to annex the Area, CHOA desires to make annual payments to the City with respect to its property that is exempt from ad valorem property taxation to defray a portion of the City’s cost of providing reasonable police services to the Area, pursuant to the terms of this Agreement;

### **NOW, THEREFORE, WITNESSETH THAT:**

1. In consideration of the annexation of the Area by the City, CHOA agrees to pay to the City on or before December 31, 2014 the sum of \$342,500 and on or before December 31 of each succeeding year during the term of this Agreement a sum equal to the Proportionate Share. The sum equal to the Proportionate Share that is payable each year shall be reduced by the Initial Payment Credit until the Initial Payment Credit equals zero.

The following words shall have the meanings set forth below for purposes of this Section 1:

“**2015 Credit Reduction**” means the product of (1) the quotient obtained by dividing (a) the sum of actual Cost for 2015 plus the actual cost incurred by the City in 2015 for code enforcement services for the Area by (b) 166.0244, times (2) the acreage of the Exempt Property as of January 1, 2015.

“**Actual Cost Per Acre Adjustment**” means the quotient obtained by dividing (1) the difference between the actual Cost for the current calendar year, calculated as of December 15 of

that year, minus the budgeted Cost that was used in calculating the Budgeted Cost Per Acre for that calendar year, by (2) 166.0244.

**“Adjusted Cost Per Acre”** means a sum equal to the Budgeted Cost Per Acre plus, commencing with the calculation of Adjusted Cost Per Acre made in December 2016, the Actual Cost Per Acre Adjustment, if the Actual Cost Per Acre Adjustment is a positive number, or minus, commencing with the calculation of Adjusted Cost Per Acre made in December 2016, the positive value of the Actual Cost Per Acre Adjustment, if the Actual Cost Per Acre Adjustment is a negative number.

**“Affiliate”** means any Person directly or indirectly controlling, controlled by, or under common control with another Person or any Person controlling ten percent (10%) or more of the voting securities or equity or membership interest of such Person. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or an equity interest, by contract, or otherwise.

**“Budgeted Cost Per Acre”** means the quotient obtained by dividing (1) the budgeted Cost for the next succeeding calendar year by (2) 166.0244.

**“Charge Per Acre”** means a sum equal to the Adjusted Cost Per Acre plus the Revenue Per Acre Adjustment, if the Revenue Per Acre Adjustment is a positive number, or minus the positive value of the Revenue Per Acre Adjustment, if the Revenue Per Acre Adjustment is a negative number.

**“Cost”** means the costs incurred by the City for (1) the salaries and benefits of the police officers providing police services primarily to the Area and (2) the equipment and supplies used by the City in providing police services primarily to the Area, which police services cannot exceed the level of police services generally provided by the City throughout the City. CHOA acknowledges that the City presently plans to assign a total of five police officers in the aggregate for all shifts to serve the Area and agrees that such five police officers serving the Area will not exceed for the Area the level of police services generally provided by the City throughout the City.

**“Exempt Property”** means any real property or interest in real property located in the Area that is owned, as of January 1 of each year the Proportionate Share is calculated, by CHOA or an Affiliate of CHOA and that is exempt from ad valorem taxation.

**“Initial Payment Credit”** means the difference between (1) \$342,500 minus (2) the sum of (a) the 2015 Credit Reduction plus (b) the cumulative amount of the Initial Payment Credit that was applied in preceding calendar years to reduce the Proportionate Share.

**“Person”** means firms, joint ventures, associations, trusts, partnerships, corporations, and limited liability companies.

**“Proportionate Share”** means the product of the acreage of the Exempt Property times the Charge Per Acre.

**“Special Tax District”** means the special tax district created by the City pursuant to Article IX, Section II, Paragraph VI of the Constitution of the State of Georgia, comprising the Area, in order to provide reasonable police services to the Area.

**“Revenue Per Acre Adjustment”** means the quotient obtained by dividing (1) the difference between the actual Cost for the current calendar year minus Revenues Available for Costs, calculated as of December 15 of that year by (2) 166.0244.

**“Revenues Available for Costs”** means the sum of Taxes collected or reasonably expected to be collected during the current calendar year plus the amount paid by CHOA pursuant to this Agreement during the preceding calendar year (excluding the \$342,500 paid by CHOA on or before December 31, 2014).

**“Taxes”** means all ad valorem property taxes levied by the City on properties located in the Area that are subject to ad valorem property taxation, whether those taxes arise from millage levied by the City on a City-wide basis or from millage levied by the City only in the Special Tax District.

2. The City shall deliver in writing to CHOA, on or before December 15 of each year, (1) the budgeted Cost for the next succeeding calendar year, (2) the actual Cost for the current calendar year, and (3) Taxes collected or reasonably expected to be collected during the current calendar year. The City shall also provide to CHOA such information as may be reasonably requested by CHOA from time to time that substantiates (1) such budgeted and actual Cost and (2) such Tax collections.

3. This Agreement shall become effective upon the annexation by the City of the Area and shall be in full force and effect until the earlier of (1) seven years from the effective date of this Agreement, (2) the date on which any portion of the Area is de-annexed by the City, or (3) December 30 of the second consecutive year in which the City shall have collected taxes levied on a City-wide basis (excluding taxes levied only in the Special Tax District) on properties located in the Area that are subject to ad valorem property taxation in excess of the actual Cost for each such year.

4. The parties are encouraged to settle their disputes arising under this Agreement first through direct discussions. If these discussions are not successful, the parties must attempt mediation as a condition precedent to litigation. If neither direct discussions nor mediation successfully resolve the dispute within 120 days of the date the dispute first arose, the parties may resolve the dispute through litigation.

5. All notices, certificates, requests, demands, or other communications hereunder shall be sufficiently given and shall be deemed given upon receipt, by hand delivery, mail, or overnight delivery, addressed as follows:

If to the City:	City of Brookhaven
	4362 Peachtree Road, N.E.
	Brookhaven, Georgia 30319
	Attention: City Manager

If to CHOA:

Children's Healthcare of Atlanta, Inc.  
1600 Tullie Circle  
Atlanta, Georgia 30329  
Attention: Chief Public Policy Officer

Either party named in this Section 5 may, by notice given to the other party, designate any additional or different addresses to which subsequent notices, certificates, or other communications shall be sent.

6. This Agreement constitutes the entire agreement of the parties and supersedes any prior agreements. This Agreement shall inure to the benefit of and shall be binding upon the City, CHOA, and their respective successors and assigns.

7. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8. This Agreement may not be amended, changed, modified, altered, or terminated, except in a writing signed by both parties hereto.

9. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

10. This Agreement is prepared and entered into with the intention that the law of the State of Georgia, exclusive of such state's rules governing choice of law, shall govern its construction.

[Signatures and Seals To Follow]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF BROOKHAVEN**

By: \_\_\_\_\_  
Mayor

(SEAL)

Attest:

\_\_\_\_\_  
City Clerk

REVIEWED BY:

\_\_\_\_\_  
City Attorney

**CHILDREN'S HEALTHCARE OF  
ATLANTA, INC.**

By: \_\_\_\_\_  
Chief Public Policy Officer

**EXHIBIT A**  
**DESCRIPTION OF AREA**

[Attached]